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NOTES OF CASES.

Contracts—Validity of Contract of Wife to Live with Husband.—

In *Rodgers v. Rodgers*, 128 N. E. 117, the Court of Appeals of New York held that an agreement of a husband to pay his wife a certain monthly amount if she would dismiss an action for divorce and live with him was not on its face invalid as being against public policy, where it rested on a valuable consideration, consisting of the condonation of alleged adultery of the husband.

The court said in part: "We think that the complaint is sufficient. The agreement set forth therein is not on its face against public policy. It is for the resumption of marital relations between husband and wife separated for cause. In the absence of proof, it may not be presumed that the wife's grievance was unsubstantial. It rests on a valuable consideration. The wife condoned the alleged adultery of the husband. That was a detriment to her. She surrendered a right. The husband got rid both of the action and the cause of action for divorce. He might have been successful in his defense, but it was a substantial benefit to him to have the case ended and his wife again under his roof. The performance of marital duty should not be made the subject of bargain and sale, but it does not appear that reconciliation was plaintiff's duty in this case. Rather it was her right to refuse to condone an offense against the marriage relation and to insist on a divorce, with separate support and maintenance. The husband was not hiring a discontented wife, separated from him without good cause, to return to him. She was to be paid to give up her right to live apart from him. She did not return until she was assured of proper treatment as a wife, and the court will not say to her that she sold her forgiveness, and that 'conjugal consortium is without the range of pecuniary consideration.' To apply such a rule to cases like this would be to discourage the reunion which the law should favor, of couples unhappily parted. We are dealing with the contract that was executed by plaintiff, and not with unexecuted possibilities based on subsequent separation of husband and wife. *Adams v. Adams*, 91 N. Y. 381, 43 Am. Rep. 675. The wife, when she returned to her husband, was entitled by law to her support. It cannot be presumed from the allegations of the complaint that such support was the equivalent of the allowance provided for her by the agreement of the parties."

Intoxicating Liquor—Enjoining Sale of Flavoring Extracts.—In *State v. Klein*, 174 N. W. 481, the Supreme Court of Iowa, held that a grocer who sells for beverage purposes flavoring extracts contain-

ing from 30 to 90 per cent. alcohol violates the law and may be enjoined from making such sales, though the sales are in quantities less than required to produce drunkenness.

The court said: "The evidence tends to show that Klein is the proprietor of a grocery business in Cherokee. It also tends to show that the Klein Grocery had an evil reputation as a place where intoxicants were unlawfully dispensed, that it was a place of resort for persons addicted to the use of intoxicants, and that drunken persons were frequently seen on or about the premises. Shortly before this action was begun the store was subjected to search under a warrant and considerable quantities of 'extracts' found. These extracts were of lemon, vanilla, and other flavoring substances, all containing a high percentage of alcohol. Defendant admits he had kept the extracts for sale and had sold more or less of them, and we think the record fairly supports the conclusion that they were sold and used as a beverage.

"Counsel for appellant argues that the extracts are not beverages, but legitimate food products, the sale of which is not prohibited. We think it quite immaterial that these articles are not made or intended for use as a beverage, if, as a matter of fact they are potable and contain alcohol in measurable proportions. The testimony shows that the alcoholic content of the extracts varied from 30 to 90 per cent. It is a matter of common knowledge that alcohol is an intoxicant, and it is not shown that the flavoring material makes the extract undrinkable. One witness does say that he does not see how a person could imbibe enough vanilla extract to become intoxicated because its tendency would be to make him sick before he drank enough to become drunk. But surely this is not the test. Alcohol is none the less alcohol because it is disguised by a foreign flavoring, and its sale is none the less unlawful because it is in quantities less than is required to produce drunkenness in the buyer."

Marriage—Annulment for Impotency—Doctrine of "Triennial Cohabitation"—In *Tompkins v. Tompkins*, 111 Atl. 577 the Court of Chancery of New Jersey held that if a wife be a virgin and apt after three years' cohabitation, the husband will be presumed to be impotent.

The court said: "This petition is for annulment of marriage on the ground of incurable impotency. The couple, young persons, have cohabited for five years, and the wife is still a virgin. She is physically and mentally normal and capable of copulating. Her virginity and aptness are established beyond question by three physicians who examined her recently. She testified that her husband never tried to function, that he made no effort at penetration, and that the extent of his performances was to lie upon her, with parts limp and be-